

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6493 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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G I D C EMPLOYEES UNION

Versus

ASST REGISTRAR

Appearance:

MR PH PATHAK for Petitioner
MR DA BAMBHANIA for Respondent No. 1
SERVED BY DS for Respondent No. 2
MR PF MAKWANA for Respondent No. 3

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 05/12/97

ORAL JUDGEMENT

Heard Mr Sinha for the petitioner and Mr Makwana

for respondent no.3 and Mr Shastri for respondent no.1. RULE had been issued in this matter on 4th September 1997. Notice as to interim relief was also issued on the same day making it returnable on 16th September 1997. The petitioner-union had applied for its registration as the registered and representative union under the scheme of BIR Act, 1946, for the silk textile industry in the local area of Ankleshwar. That application was filed subsequent to the application filed by respondent no.3 - union. As per the provisions of law, the Registrar concerned proceeded with the application of the respondent no.3 earlier and rejected the said application and those orders came to be confirmed up to this Court. The application of the petitioner-union was a subsequent one and hence it was taken up subsequently and it was also rejected by the Registrar. But, in appeal that application came to be allowed. Respondent no.3 - union applied for review of that appellate order and in that review application the appellate order has come to be stayed pending the decision of the review by respondent no.2, member of the Industrial Court.

2 Being aggrieved by that stay, this petition has been filed.

3 Mr Sinha, learned advocate for the petitioner, submits that this is not a case of a registered or a representative union being dislodged. It is also not a case of there being two applications in the same calendar month. That being so, there was no question of the respondent no.3 - union having any locus in the proceeding initiated by the petitioner-union. In any event, the petitioner-union on coming to know about those proceedings or otherwise also ought to have remained vigilant and sought intervention before the trial authority. The contesting respondent in the appeal was the Registrar of Trade Unions under the BIR Act. He has not applied for review and that being the position, at the instance of a third party, the review would not lie nor can the appellate order be stayed.

4 Mr Makwana submits that respondent no.3 was a necessary party; it had an interest in the matter which is also indicated from the fact that it had earlier applied for registration though, its application came to be rejected. Mr Shastri appearing for respondent no.1 has declined to join into this controversy.

5 Mr Makwana submits that it would be proper that the review application be heard and decided

expeditiously. There will not be any difficulty in directing the respondent no.2 to hear and decide the same expeditiously. The only question is whether during the pendency of review proceeding the order passed by the Appellate Court earlier ought to be stayed. Mr Sinha has taken me through the review order. From that order it appears that by and large the learned member of the Industrial Court was satisfied with the submissions of the petitioner-union. Yet, in his view, it would have been proper to stay the order and therefore he passed that order. Mr Sinha submits that where the locus itself is challenged and where the concerned union had applied earlier and its application had been rejected, the certificate issued to the petitioner-union ought not to have been stayed during the pendency of the review application. In my view, the submissions of Mr Sinha deserve to be accepted, inasmuch as stated above, this is not a case where the registered union is being dislodged nor were there two applications in the same month and there is a serious challenge to the locus of respondent no.3 - union. In that view of the matter, the learned judge ought not to have stayed the order which he had passed earlier. He can certainly review his own order if for any reason later on he comes to the conclusion that respondent no.3 - union had a locus. A strong prima facie case in fact exists in favour of the petitioner-union and that being so, the stay of the appellate order was not called for. In the circumstances, the order passed in Review Application dated 24th July 1997 is hereby quashed and set aside. The learned Member of the Industrial Court will proceed to hear and decide the said application expeditiously in accordance with law and preferably by the end of June 1998. In the meanwhile the appellate order and the registration certificate issued in consequence thereof will continue to operate. RULE is made absolute accordingly with no order as to costs.

Mr Makwana applies for stay of this order. In view of his request, I asked him as to what prejudice will be caused to respondent no.3-union and as to whether the petitioner is going to sign any binding settlement in the meanwhile and no particulars are given by him. In view thereof, there is no occasion to stay the order which I have passed. The request is rejected.

(mohd)